STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 12, 2007
v	No. 267732 Macomb Circuit Court
EVA MARIE WILLIAMS, Defendant-Appellant.	LC No. 05-001564-FH

Before: Neff, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Defendant appeals as of right her convictions and sentences for possession with intent to deliver marijuana, less than 5 kilograms, MCL 333.7401(2)(d)(iii); possession of a firearm during the commission of a felony, MCL 750.227b; possession of a controlled substance, non-narcotic, MCL 333.7403(2)(b); possession of marijuana, MCL 333.7403(2)(d); and maintaining a drug house, MCL 333.7405(d). We affirm.

Defendant argues that the prosecutor failed to present sufficient evidence at trial to support the convictions for possession with intent to deliver marijuana, possession of a controlled substance, maintaining a drug house, and possession of a firearm during the commission of a felony. We review a challenge to the sufficiency of the evidence de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Viewing the evidence in the light most favorable to the prosecution, and drawing all reasonable inferences from the evidence, we conclude that a rational jury could find, beyond a reasonable doubt, that defendant committed these offenses. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Defendant does not dispute that the substance found was marijuana, that she was not authorized to possess the marijuana, or that the intent to deliver could be properly inferred from the quantity of marijuana found, the way it was packaged for resale, and the presence of additional supplies and equipment for packaging to sell, and the packaging. MCL 333.7401(2)(d)(iii); *Wolfe*, *supra* at 524-525. Likewise, defendant does not dispute that the Vicodin is a controlled substance analogue and that she was not authorized to possess it. MCL 333.7403(2)(b). Defendant only disputes that there was sufficient evidence to prove beyond a reasonable doubt that she "possessed" the marijuana found in the closet and the crock pot, and the Vicodin. Defendant further argues that because there was insufficient evidence to convict her of possession with intent to deliver marijuana, a felony, there was insufficient evidence to sustain her felony-firearm conviction.

A defendant does not need to own or physically possess the controlled substance to have possession; possession may be constructive and it may be joint. *Wolfe, supra* at 519-520. Possession only requires "a showing of '"dominion or right of control over the drug with knowledge of its presence and character."'" *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003) (citations omitted). A defendant's mere presence in the place where the drugs are found is insufficient to prove possession; some other connection between defendant and the controlled substance must exist. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). A defendant's control over the premises where controlled substances are found, as shown by the possession of a key or the ability to arrange a meeting in the premises; a defendant's control over the drugs, as shown by an attempt to destroy or hide them; or a defendant's involvement in past or present drug sales together are sufficient connections to prove possession. *Wolfe, supra* at 522-523. A defendant's admission or other testimony that he or she actually lives on the property when the drugs are found in or near his or her belongings is also a sufficient connection to prove possession. *Fetterley, supra* at 516-517. Circumstantial evidence that a defendant lives, or at least stays where the controlled substance is found, may also be deemed sufficient. See *People v Hardiman*, 466 Mich 417, 421-422; 646 NW2d 158 (2002). If a defendant's clothing or personal items are found in the home, and drugs are found nearby, a jury may find that defendant possessed the drugs. *Id.*

There was sufficient evidence to show that defendant possessed the marijuana and the Vicodin. Defendant admitted that she stayed in the mobile home regularly during the three months before the search, whenever she visited Dana Ferguson, her lover. She admitted that her and Fergusson shared the bedroom where the marijuana was found. In addition, even though it may not have been her own, she had a key to the mobile home, a fact from which a jury could infer she exercised some control over the premises. Clothing consistent with her size was found in the bedroom closet where the marijuana was stored. Further, the second bedroom contained a bed, toys, and clothes suitable for an eight-year-old girl, another indication that defendant and her daughter had some control over the premises. Finally, two officers testified that defendant told them that she and her daughter lived there. Viewed in the light most favorable to the prosecution, a reasonable jury could find beyond a reasonable doubt that defendant lived in the mobile home and exercised control over the premises.

Moreover, defendant admitted that she heard rumors that Ferguson was dealing drugs from the mobile home. The *clear* Tupperware container, in which marijuana was stored, was on the floor of the closet in the bedroom defendant regularly used, and defendant had marijuana on her person when searched. These facts support the reasonable inference that defendant recognized marijuana and knew that marijuana was on the premises. Further, the Vicodin was found in unlabeled pill bottles, on the top of the refrigerator in the kitchen, and defendant admitted she had seen the bottles. A reasonable jury could infer from this evidence that defendant knew the pill bottles contained Vicodin. Because she controlled the premises and knew the drugs were present, there was also sufficient evidence to find beyond a reasonable doubt that she had control over the drugs. Thus, there was sufficient evidence for a rational jury to find, beyond a reasonable doubt, that defendant possessed the marijuana with intent to deliver and possessed the Vicodin. Because the conviction for possession with intent to deliver marijuana was the predicate felony for the felony-firearm charge, the felony-firearm conviction is also supported by the record evidence.

Defendant also argues that there was insufficient evidence to support her conviction for maintaining a drug house because she did not exercise control over the home. We disagree. A conviction for maintaining a drug house requires the prosecution to prove that (1) the defendant exercised authority or control over the house, (2) for the purpose of making it available for the keeping or selling of proscribed drugs, and (3) the defendant did so continuously for an appreciable period of time. MCL 333.7405(d); *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999). In this case, there was sufficient evidence for a jury to decide beyond a reasonable doubt that the mobile home was used to keep proscribed drugs and that it was used over an appreciable period of time. Police officers conducted undercover drug buys over the course of several weeks and, on at least two occasions, the seller obtained the marijuana from Ferguson's mobile home. Thus, a reasonable jury could find that the residence was used, at minimum, for keeping drugs for an appreciable time. Further, as discussed above, there was evidence from which a reasonable jury could conclude beyond a reasonable doubt that defendant exercised authority or control over the residence. She was present during the search, admitted that she stayed there regularly, and she had a key. Viewing the evidence in the light most favorable to the prosecution, a reasonable jury could find beyond a reasonable doubt that defendant maintained a drug house.

Defendant also argues that the trial court improperly scored her Prior Record Variables (PRV) and Offense Variables (OV) and that she is entitled to resentencing based on correctly scored guidelines. However, because defendant's sentence is within the guidelines, and she neither objected to the scoring at sentencing nor raised any challenge by way of a motion for resentencing or motion to remand with this Court, her allegations of error are beyond our review. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004).

Defendant's final argument, that the trial court's scoring of the guidelines based on facts not determined by a jury violated defendant's constitutional rights as articulated in *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), is without merit. *Blakely* does not apply to Michigan's indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006).

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Christopher M. Murray